

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-110 Deficiency notice -- Preliminary ruling -- Deferral to arbitration.** The executive director or a designated staff member shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued and served on all parties, identifying the defects and specifying a due date for the filing and service of an amended complaint. If the defects are not cured ~~((in a timely manner))~~ within twenty-one days, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

~~((The))~~ (a) A preliminary ruling forwarding a case for further proceedings is an interim order which may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310.

(b) The preliminary ruling limits the causes of action before an examiner and the commission. A complainant who claims that the preliminary ruling failed to address one or more causes of action it sought to advance in the complaint must, prior to the issuance of a notice of hearing, seek clarification from the person that issued the preliminary ruling.

(c) The preliminary ruling shall establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.065](#), [28B.52.073](#), [34.05.419](#), [41.56.140](#), [41.56.150](#) and [41.59.140](#). 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.073](#), [41.56.140](#), [41.56.150](#), [41.59.140](#) and [53.18.015](#). 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

#### AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-260 Settlement conference.** Separate from any prehearing conference concerning procedural matters held by the examiner under [WAC 10-08-130](#), a settlement conference concerning substantive issues may be held under [WAC 10-08-200\(15\)](#)(~~on the examiner's own motion or at the request of any party to the proceeding~~)).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the unfair labor practice proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to explore settlement between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying unfair labor practice proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute. Participation in a settlement conference is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a settlement conference shall not prejudice that party in any manner. Conversations had and offers made in a settlement conference shall not be admissible in evidence at a hearing.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [34.05.431](#), [41.56.160](#) and [41.59.150](#). 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-260, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.073](#), [41.56.160](#), [41.59.150](#) and [53.18.015](#). 90-06-074, § 391-45-260, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

**AMENDATORY SECTION**(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-290 Briefs.** (1) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties to the proceeding as required by [WAC 391-08-120](#) (3) and (4).

(2) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The hearing examiner grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [34.05.437](#), [41.56.160](#) and [41.59.150](#). 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-45-290, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.073](#), [41.56.180](#), [41.59.150](#) and [53.18.015](#). 90-06-074, § 391-45-290, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

**AMENDATORY SECTION**(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-310 Examiner decisions.** (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or a hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, his or her designee, or a hearing examiner, within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or a hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or a hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or a hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or a hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of registry jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a preliminary ruling by the executive director or his or her designee or a hearing examiner under [WAC 391-45-110](#); or

(ii) Application of the six-month statute of limitations;

(iii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under [WAC 391-45-350](#), a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.065](#), [41.56.160](#) and [41.59.150](#). 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.073](#), [41.56.180](#), [41.59.150](#) and [53.18.015](#). 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-350 Appeals.** An order issued under [WAC 391-45-110](#)(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with [WAC 391-08-180](#). Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.065](#), [34.05.464](#), [41.56.160](#) and [41.59.150](#). 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-45-350, filed 7/1/98, effective 8/1/98. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [28B.52.073](#), [41.56.180](#), [41.59.150](#) and [53.18.015](#). 90-06-074, § 391-45-350, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 85-19-059 (Resolution No. 85-01), § 391-45-350, filed 9/16/85. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-45-056 Special provision -- State civil service employees.